National Energy Board

Office national de l'énergie

Reasons for Decision

Chevron Canada Limited

MH-002-2012

July 2013

Tolls and Tariff

Canada

National Energy Board

Reasons for Decision

In the Matter of

Chevron Canada Limited

Application for a Priority Destination designation for the Burnaby Refinery, pursuant to section 1.58 of the tariff of Trans Mountain Pipeline ULC

MH-002-2012

July 2013

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Cat No. NE22-1/2013-3E
ISBN: 978-1-100-22406-0

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Printed in Canada

N° de cat. NE22-1/2013-3F
ISBN: 978-0-660-20989-0

Ce rapport est publié séparément dans les deux langues officielles. On peut obtenir cette publication sur supports multiples, sur demande.

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Imprimé au Canada

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Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF an application dated 19 June 2012 by Chevron Canada Limited, for Priority Destination designation, pursuant to section 1.58 of the tariff of Trans Mountain Pipeline ULC, filed with the National Energy Board under File No. OF-Tolls-Group1-T260-2012-05 01; and

IN THE MATTER OF Board Hearing Order AO-001-MH-002-2012 dated 21 August 2012;

HEARD in the city of Calgary, Alberta, on 26, 27, and 29 March and 2, 3, and 4 April 2013;

BEFORE:

D. Hamilton	Presiding Member
B. Vergette	Member
J. Ballem	Member

Appearances	**Participants**	**Witnesses**
C. W. Sanderson, Q.C. K. Bergner	Chevron Canada Limited	H. York E. Fountain K. Judd P. Gray
N. Schultz	Canadian Association of Petroleum Producers	
S. Shrybman	Communication, Energy and Paperworkers Union	D. Coles
D. P. Langen S. Ladha	BP Canada Energy Group ULC	K. Friesen S. Richards
D.G. Davies N. A. Baines	Imperial Oil Limited	D. Kohlmann H. J. Roman
G. Cameron K. Slipp	Phillips 66 Canada ULC and Shell Trading Canada	P. Unruh L. Rosko P. Carpenter
R. B. Wallace, Q.C. M. D. Keen	Tesoro Canada Supply & Distribution Ltd.	D. Kirshner H. Hobbs

M. Buchinski C. Prentice	Trans Mountain Pipeline ULC
C. King	Alberta Department of Energy
D. Cox J. Lim	National Energy Board

Written Arguments

Chevron Canada Limited

Communication, Energy and Paperworkers Union

BP Canada Energy Group ULC

Imperial Oil Limited

Phillips 66 Canada ULC/Shell Trading Canada

Tesoro Canada Supply & Distribution Ltd.

Trans Mountain Pipeline ULC

British Columbia Ministry of Energy, Mines and Natural Gas

Glossary of Terms and Abbreviations

Available Capacity	hydraulic capacity of the pipeline available for the transportation of petroleum in a month
Bid Premium	the total bid that a shipper paid to win capacity allocated for deliveries over the Westridge Dock
BP Canada	BP Canada Energy Group ULC
bpd	barrels per day
Brent	a blended crude stream produced in the North Sea region which serves as a reference for pricing a number of other crude streams
CEP	Communications, Energy and Paperworkers Union of Canada
Chevron	Chevron Canada Limited
Export Destinations	export markets in Washington State served via the Puget Sound Pipeline
Firm Service	contracted capacity on the Trans Mountain Pipeline system
Firm Shipper	a shipper who is party to a contract for Firm Service to the Westridge Dock since implementation of the RH-2-2011 decision, including Astra Energy Canada Inc., Cenovus Energy Inc., Nexen Marketing, PetroChina International (America) Inc., and U.S. Oil & Refining Co.
Imperial	Imperial Oil Limited
Intermediates	partially refined petroleum (e.g. naphtha and vacuum gas oil)
Intervening Shippers	BP Canada, Imperial, P66, Shell and Tesoro
Land Destinations	all Trans Mountain pipeline destinations other than the Westridge Dock
Land Shippers	shippers who ship to Land Destinations
NEB or Board	National Energy Board

NEB Act	*National Energy Board Act*
P66	Phillips 66 Canada ULC
Panamax	marine vessel with a crude oil cargo capacity of up to approximately 55 600 m^3 (350,000 bbls)
PDD	Priority Destination designation
Pipeline	Trans Mountain Pipeline system
Puget Sound Pipeline	the pipeline system of Trans Mountain Pipeline (Puget Sound) LLC
Puget Sound Refiners	those companies operating, and shipping to, refineries connected to the Puget Sound Pipeline, including BP Canada, P66, Shell, and Tesoro
Secondary Market	Transactions between shippers on the Pipeline for trading petroleum in the Pipeline or capacity on the Pipeline.
Shell	Shell Trading Canada
Tariff	Tariff of Trans Mountain Pipeline ULC as amended from time to time.
Tesoro	Tesoro Canada Supply & Distribution Ltd.
Trans Mountain	Trans Mountain Pipeline ULC.
Uncommitted Capacity	remaining Available Capacity taking into account the firm capacity utilized in a given month
Uncommitted Shipper	(i) a shipper that is not a Firm Service Shipper; and (ii) a Firm Service Shipper in respect of any volumes of petroleum nominated by Firm Service Shipper in excess of the sum of its monthly volume and make-up volume
Ultra Large Crude Carrier	marine vessel with a crude oil cargo capacity of up to approximately 635 900 m^3 (4,000,000 bbls)
Westridge Dock	Trans Mountain's marine crude oil loading facility at its Westridge Marine Terminal in Burnaby, British Columbia

Chapter 1

Disposition

Chevron applied to the Board for an order designating Chevron's Burnaby Refinery as a Priority Destination on the pipeline system of Trans Mountain. In reaching the Decision, the Board took into consideration the evidence and submissions of all parties to the MH-002-2012 proceeding.

The Board finds that Priority Destination is a relief that should only be applied in extraordinary circumstances. Based on the evidence provided, the Board does not find that the circumstances of Chevron's Burnaby Refinery warrant a Priority Destination designation (PDD). For this reason, it is unnecessary to address the terms and conditions of PDD. The Board notes that it is Chevron's responsibility to manage the Burnaby Refinery's supply options in a manner that best enables it to meet its minimum run rates and reasonably ensure its long-term viability.

The Board notes that the nomination and capacity allocation procedures are likely contributing to apportionment on the Pipeline. In this regard, the Board directs Trans Mountain to submit revised nomination or capacity allocation procedures that address the current apportionment issue or an explanation of why the procedures in place at that time are adequate, for Board approval on or before 30 September 2013.

The Board's Decision was informed by the confidential information presented over the course of the proceeding, but makes reference only to evidence on the public record. The Board does not find any aspects of the proceeding to be contingent on issues to be decided, or already decided, in other regulatory proceedings. The ensuing chapters constitute the Board's Reasons for Decision in respect of the application in the MH-002-2012 proceeding.

D. Hamilton
Presiding Member

B. Vergette
Member

J. Ballem
Member

Calgary, Alberta
July 2013

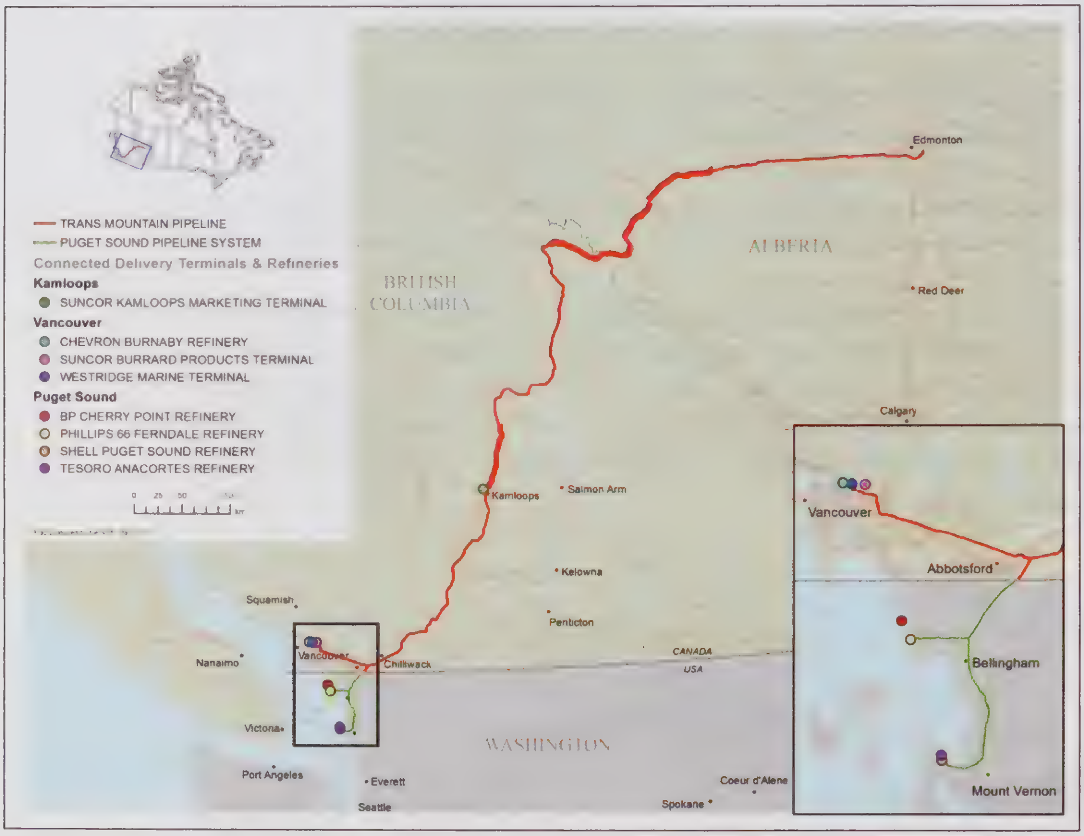
Chapter 2

Introduction and Background

2.1 Overview of the Application and Hearing

On 19 June 2012, Chevron applied to the Board for an order designating Chevron's Burnaby Refinery a Priority Destination (the Application) pursuant to section 1.58 of the Tariff.[1] Chevron specified that the Application was brought in response to significant and continuing apportionment of nominations on the Pipeline, which imperils Chevron's ability to obtain sufficient feedstock for the Burnaby Refinery.

Figure 2-1 Map of the delivery points on the Trans Mountain Pipeline System



[1] Chevron filed the Application pursuant to section 1.58 of Trans Mountain Petroleum Tariff No. 88. However, Tariff No. 89, which cancelled Tariff No. 88, came into effect in May 2013. The PDD provision of section 1.58 remained unchanged across the tariffs.

In times of apportionment on the Pipeline, the Tariff stipulates that available capacity will be allocated first to Firm Shippers. Of the remaining capacity, Uncommitted Shippers nominating to Priority Destinations will have priority over all other nominations. Section 1.58 of the Tariff defines Priority Destination as follows:

> "Priority Destination", or any derivative thereof, means a refinery, marketing terminal or other facility connected to and capable of receiving Petroleum from facilities of the Carrier or those of Trans Mountain Pipeline (Puget Sound) LLC, and so designated by the National Energy Board by reason that it is not capable of being supplied economically from alternative sources.

On 3 August 2012, the Board issued Hearing Order MH-002-2012 setting the Application down for an oral public hearing. A more detailed procedural history and the List of Issues are set out in Appendices I and II to this Decision.

Upon request, the Board granted confidentiality for certain information (Confidential Information) filed by Chevron and several intervenors during the proceeding under section 16.1 of the *National Energy Board Act* (the NEB Act). The process for handling this Confidential Information was set out in Board Orders PO-001-MH-002-2012 and PO-002-MH-002-2012. Legal counsel, expert third party consultants, and other persons authorized by Order of the Board were permitted to access the Confidential Information if they executed all necessary undertakings of confidentiality.

The oral portion of the hearing took place from 26 March to 4 April 2013 in Calgary, Alberta. Portions of the oral hearing were public, while Confidential Information was tested during *in camera* sessions. Written final argument was filed with the Board between 10 April and 19 April 2013.

2.2 Overview of Priority Destination

The first priority destination provision approved by the Board occurred in the MH-3-85 proceeding, which related to apportionment of pipeline space on the Interprovincial Pipe Line (now Enbridge Pipelines) system. The Board did not detail a clear approach to how the priority destination provision should be applied, but noted that:

> With regard to establishing priority destinations, the Board considers that the allocation system should remain as flexible as possible and the designation of priority destinations should be kept to a minimum.

In 1985, shipments on the Pipeline were apportioned as a result of operational changes to accommodate volumes of both refined product for the British Columbia market and heavy oil for offshore markets. The Priority Destination clause was introduced in the Tariff in November 1985 to incorporate an allocation formula to be employed if and when shipments were apportioned. At that time, the allocation

formula established that for certain petroleum products, first priority over Pipeline capacity would be reserved for Priority Destinations.

After 1985, apportionment of Pipeline capacity was not material again until 2003, when it arose as a result of increased usage by shippers wishing to export through the Westridge Dock. Chevron filed applications with the Board requesting PDD in August 2003 and January 2005. On both occasions, following the filings, Tariff amendments were implemented revising nomination and apportionment arrangements. Chevron ultimately withdrew both applications for PDD.

In the RH-2-2011 proceeding, Trans Mountain applied to the Board requesting approval of Firm Service on the Pipeline and a reallocation of capacity from Land Destinations to the Westridge Dock. The Board approved Firm Service on the Pipeline and reduced the amount of capacity available to Land Destinations.

In RH-2-2011, Trans Mountain also proposed to remove the PDD provision from the Tariff. The Board was not convinced that the complications of including the provision in the Tariff would outweigh the benefits. The Board was of the view that shippers without an economic alternative method of supply would benefit from transparency of conditions they must meet to be given a PDD. The Board directed Trans Mountain to file a revised Tariff including the PDD provision.

To date, the Board has not designated a Priority Destination since the tariff provision was introduced in 1985.

2.3 Allocation and Apportionment on the Pipeline

The nameplate capacity of the Pipeline is 47 700 m^3/d (300,000 bpd). The Pipeline serves a number of downstream Land Destinations, including the Burnaby Refinery and the refineries in Puget Sound. The Puget Sound Refiners receive supply from the Pipeline via the connecting Puget Sound Pipeline. Of the total Pipeline capacity, 35 100 m^3/d (221,000 bpd) is reserved for Land Destinations, and is allocated according to each shippers' monthly nominations of crude and petroleum products. The remaining Pipeline capacity is allocated to the Westridge Dock, including 4 000 m^3/d (25,000 bpd) for uncommitted shipments, and 8 600 m^3/d (54,000 bpd) for committed shipments.

The current allocation of Pipeline capacity was established in the RH-2-2011 proceeding. In its decision, the Board approved among other things Trans Mountain's proposal to reallocate 4 300 m^3/d (27,000 bpd) of existing Land capacity to Westridge Dock capacity. While the Board recognized that Land Shippers would be allocated a lesser volume of capacity and that this could increase apportionment for Land Shippers, it encouraged Trans Mountain and its shippers to continue discussions on ongoing issues, including chronic apportionment.

In each month since November 2010, monthly nominations to Land Destinations have exceeded the capacity of the Pipeline. The resulting apportionment on shipments originating in Edmonton was, on average, 71% between January 2012 and March 2013.

Chapter 3

Priority Destination Designation: Criteria

To be designated a Priority Destination in accordance with section 1.58 of the Tariff, a facility must fulfill two general requirements: a Priority Destination must be (1) a refinery, marketing terminal or other facility connected to and capable of receiving Petroleum from the Pipeline; and (2) incapable of being supplied economically from alternative sources.

A principal point of dispute among the parties involved in this proceeding was the interpretation of the phrase in section 1.58 of the Tariff, "and so designated by the National Energy Board by reason that it is not capable of being supplied economically from alternative sources." The Tariff provides no guidance with respect to the interpretation of the phrase; however, each party has offered its own views as well as potential criteria, conditions, and considerations to be applied. This Chapter will outline the criteria to be used in determining whether PDD should be granted and how this criteria applies to Chevron. The last section of this Chapter will discuss the implications of PDD.

3.1 Overview of Criteria

Submissions of Chevron

Chevron submitted that in this particular case the Board should apply the following criteria for PDD:

(a) The refinery must establish that, at the time of its application to the Board, it was incapable of being supplied by an alternate source for the deliveries that it has traditionally sought from the Pipeline.
(b) If the refinery has demonstrated that it was incapable of being supplied from an alternate source at the time of application, a determination must be made on whether there were economical steps available to it to acquire crude oil from a source other than the Pipeline.
(c) If there were alternate sources of crude oil available to the refinery from another source, a determination must be made on the level of shortfall that would remain after those sources were developed to their dependable capacity.

Chevron asserted that it believed it was taking a price risk, but not a supply risk, in choosing to be exclusively reliant on the Pipeline. It accepted that alternative supply sources, including offshore sources, would at times be less expensive than Western Canadian crude. However, Chevron submitted that it did not knowingly

accept the supply risk that the Pipeline would be unable to provide the Burnaby Refinery with the supply it requires.

Volume Requirement

Chevron interpreted the PDD provision to apply to a location rather than a specific volume. For this reason, Chevron submitted that the relevant volume for considering the availability of alternatives is the locational capacity of the Burnaby Refinery, which is 57,000 bpd. According to Chevron, all investments made at the Burnaby Refinery relied on a common assumption that the Pipeline would provide a reliable source of supply, enabling the refinery to utilize all of its assets when market conditions make doing so profitable. Chevron maintained that the prolonged operation of the Burnaby Refinery at lesser rates would be wasteful because the current investment in plant, equipment and staffing is designed to utilize the full refining capacity.

Chevron asserted that basing a PDD volume requirement on a refinery's minimum run rate would institutionalize economic inefficiency by stranding the capital and other resources of the unused portions of the refinery's capacity. Furthermore, Chevron submitted that a refinery may not necessarily be profitable even if it can be physically operated at its minimum run rate.

Economic Alternative Sources

Chevron proposed that an alternative source may be deemed "economic" if its transportation cost is less than the transportation cost of the Pipeline, which is equated to the posted Pipeline toll. Under this test, the transportation costs would be compared independent of the cost of the crude being delivered.

Chevron asserted that a location that uses Pipeline supply on an opportunistic basis depending on prevailing market conditions is in a different position than a location that is entirely reliant on the Pipeline and only considers alternative means of delivery where Pipeline capacity is constrained. For this reason, Chevron suggested that the Board also consider the circumstances surrounding the development of alternate means of receiving supply. More specifically, was investment in the alternative made with the intent of economic benefit relative to the Pipeline? Chevron acknowledged, however, that the application of this test would be challenging and would require the Board to make a subjective determination on the motives underlying investments made in the past.

In the alternative, if the Board rejects the test above, Chevron proposed that the Board should consider only whether the location has the current ability to be supplied from alternate sources. Chevron submitted that the Board should assess the feasibility of alternatives on a case-by-case basis, having regard to economics as well as other aspects of feasibility. Chevron stated that the intent of the inquiry should be to avoid wasteful investments in new infrastructure that would not be necessary if the

Pipeline's capacity supplied those that are truly dependent upon it in times of constraint. Chevron did not believe that the Tariff requires a location to commit significant capital to construct or modify facilities for the purpose of obtaining alternative deliveries.

Chevron also indicated that, in its view, an alternative source must necessarily utilize an alternative form of transportation to the Pipeline. Thus, while additional crude petroleum supplies are available via the Pipeline through the purchase of crude petroleum or delivery rights from other shippers (referred to as the Secondary Market) and through redirections of service intended for the Westridge Dock, Chevron asserted that such supplies are not alternatives for the purposes of PDD.

Chevron submitted that refinery economics are not relevant to the Board's decision regarding whether or not to grant PDD. Chevron asserted that the Tariff makes no reference to the economic circumstances of the shippers or the end user customer. Furthermore, regulation based on refinery economics is inconsistent with the Board's role not to subsidize or prop up enterprises that cannot compete in the marketplace. Under the NEB Act, the Board's regulatory jurisdiction extends to pipelines and their owners, not the economic activities of oil refineries or other customers of pipelines. Chevron also asserted that an interpretation which applied the word "economically" to require consideration of the profitability of each refinery would favour the inefficient refinery over the efficient one because its profit margin was less.

Submissions of the Intervening Shippers

Removal of the PDD Provision

A number of parties proposed that the PDD provision be removed from the Tariff on the basis that it is not compatible with the current environment for market-based pipeline regulation. P66 and Shell submitted that the provision for PDD should be removed from the Tariff on the basis that it is a construct of a period in which the Pipeline was strictly a common carrier pipeline, and did not offer an organized secondary market, Firm Service, or biddable Westridge Dock capacity. Dr. Carpenter, an expert witness for P66 and Shell, was of the view that the Secondary Market allocates Pipeline capacity efficiently to those shippers who value it most, and that PDD would grant to a Priority Destination capacity that would otherwise be efficiently allocated through the Secondary Market.

Purpose of the PDD Provision

Several parties indicated that if the Board should choose to retain the Tariff provision, PDD should be limited in its application such that it would be granted only in response to temporary, unusual, or extreme supply disruptions that could not have been ameliorated by prudent investment in alternatives. Tesoro stated that a PDD should reflect an unanticipated physical impediment to crude supply that commercial mitigation options cannot address in the near term. Moreover, it was asserted that for

these physical conditions to warrant a PDD, they would otherwise require a refinery to terminate or suspend its operations. P66 and Shell argued that if there is a role for PDD in the present market, it is to protect a shipper who cannot access sufficient supply at any price. Various intervenors agreed that a PDD should not be used to prop up a refinery that cannot survive economically in the marketplace.

Volume Requirement

The Intervening Shippers generally agreed that in order to be eligible for PDD, a refinery must demonstrate that it is not capable of receiving a certain volume requirement, and that this volume requirement should be set no higher than the refinery's minimum run rate. Dr. Carpenter noted that by limiting the volume requirement and the resulting PDD volume to the applicant's minimum run rate, the applicant will have an incentive to make an efficient decision regarding whether to purchase above its minimum run rate from alternative sources. Dr. Carpenter also noted that it may be efficient to run a refinery at something less than capacity if it is profitable to do so.

Economic Alternative Sources

The Intervening Shippers generally agreed that any standard in considering whether or not to grant PDD relief requires an assessment by the Board of the applicant's economics. The Intervening Shippers asserted that the intent of the words "supplied economically from alternative sources" in section 1.58 of the Tariff cannot be narrowly focused on the comparison of per barrel transportation costs relative to the Pipeline toll, as proposed by Chevron. They submitted that if this test were adopted, every shipper seeking unallocated Land capacity could show that its transportation alternatives would be more expensive than the Pipeline toll, and thus every shipper could qualify for PDD. The Intervening Shippers stated that the interpretation of section 1.58 should also give consideration to crude oil commodity cost.

While the Intervening Shippers agreed that an applicant's economics are of importance to the determination of whether the applicant can be supplied economically from alternative sources, two different tests were endorsed.

Submissions of P66 and Shell

P66 and Shell were of the view that the Board should base any determination on the marginal economics of an alternative source of supply. According to Dr. Carpenter, the alternatives to be evaluated for the purposes of PDD are any of those which serve to replace barrels of crude feedstock lost by the refinery due to apportionment. In Dr. Carpenter's view, the issue then is whether the alternatives are "economic" to the refinery. For these purposes, he recommended a test based on whether it is profitable on an incremental basis to run a barrel of crude oil from the alternative source. It was Dr. Carpenter's view that an alternative supply source is economic if the expected revenue that can be generated by running these supplies exceeds the costs. Under this

test, an alternative would not be economic if it was required by the refinery to meet minimum run rates, but earned a negative return in doing so.

Other Intervenors

BP Canada, Imperial, and Tesoro presented the view that refinery profitability should be the primary consideration. Tesoro submitted that the phrase "cannot be supplied economically by alternative sources" should be understood to mean that obtaining crude oil supplies from all supply options available to a destination would not permit the refinery to run at a profit and would not likely permit it to do so in the near future. Tesoro indicated that in order to reach its minimum run rate, a refinery may run an alternative crude oil that would be, on an incremental basis, unprofitable. By doing so the refinery may, with respect to the entire volume, be able to run very profitable crude oil, which would allow the refinery to make the most dollars per day.
BP Canada submitted that the burden of proof is on the applicant to show that it is unable, from any source after mitigation, to run the refinery profitably at its minimum run rate.

In this regard, BP Canada, Imperial, and Tesoro supported an interpretation of "capable of being supplied economically from alternative sources" advanced by Chevron in the MH-2-2005 proceeding, which specified that an alternative method of accessing crude oil for the refinery would only be economic if the cost of that method allowed the refinery operation to earn a sufficient margin to justify ongoing operation. Tesoro noted that a refinery should continue in operation as long as it is able to recover its cash operating costs, provided that substantial new capital investments or significant turnaround costs are not required to continue those refinery operations. Tesoro also noted that there can be periods when a refinery may run at a loss, but nevertheless remain in operation because the expectation is that it will generate a positive margin in the future.

Views of the Board

Over the course of the proceeding, the Board heard views from the parties regarding whether the Tariff provision for Priority Destination should be retained, removed or modified. The Board notes that since PDD was initially introduced in the Tariff in 1985, a number of changes have occurred on the Trans Mountain pipeline system. These changes include expansions of the Pipeline, the introduction of Firm Service to the Westridge Dock and the development of a Secondary Market. While it has been suggested that these changes are a basis for removing the PDD provision, the Board is of the view that the provision should be retained for the purposes of providing relief in extraordinary circumstances.

The Board also heard views from the parties on their respective interpretations of section 1.58 of the Tariff which reads as follows.

> "Priority Destination", or any derivative thereof, means a refinery, marketing terminal or other facility connected to and capable of receiving Petroleum from facilities of the Carrier or those of Trans Mountain Pipeline (Puget Sound) LLC, and so designated by the National Energy Board by reason that it is not capable of being supplied economically from alternative sources.

Because the Board has never been required to designate a Priority Destination in the past, the Board will explain in the following paragraphs the role of PDD as well as the criteria under which a facility connected to the Pipeline may qualify.

The criteria include two key components. One component is based on the concept of a minimum volume requirement. The other component involves the consideration of supply options and economics. Each component will first be addressed independently, and then discussed together.

Minimum volume requirement

In the Board's view, the use of the word "supplied" in the Tariff provision indicates that a supply requirement, or volume requirement, should be one consideration in determining whether PDD should be awarded. Accordingly, the Board is of the view that to be eligible for PDD, an applicant must demonstrate that it is unable to meet, or is at substantial risk of not meeting, a certain volume requirement in supplying its facility.

In the case of refineries, the Board believes that PDDs should generally be reserved for circumstances in which a refinery is unable to receive sufficient feedstock to keep its equipment in operation. The parties to the proceeding agreed that a refinery's minimum run rate is the volume cut-off under which a refinery could no longer operate its equipment. In this regard, the Board finds that for the purposes of PDD, the relevant volume requirement in supplying a refinery is its minimum run rate.

Therefore, in the case of a refinery, the first criterion in determining whether to designate a Priority Destination is: the applicant must demonstrate that it is unable to meet, or is at substantial risk of not meeting, its minimum run rate.

In the Board's view, a PDD volume requirement based on a refinery's minimum run rate is unlikely to create inefficiency related to unused portions of the refinery's capacity, as it was argued by Chevron. Limiting the volume requirement to a refinery's minimum run rate contributes instead to providing appropriate incentives to a refinery in pursuing other feasible supply options that can mitigate the risks associated with supply disruptions.

Generally, the parties to the proceeding understood that in determining whether a refinery can meet its minimum run rate, consideration should be given both to receipts from Pipeline nominations and deliveries from economic alternative supply options. Thus, the second component of the PDD criteria focuses on supply options, and in particular, whether they are economic for the purposes of PDD.

Supply options and economics

A range of terminology was used throughout the proceeding to refer to the supplies of a refinery. Parties have used expressions such as alternatives, alternative sources of supply, alternative sources of delivery, etc. In this Decision, the Board will use the term "supply options" to refer to the full complement of supplies available to a refinery, including receipts from Pipeline nominations, and any other existing or potential supplies that a refinery may have access to presently or at any point in the future.

The evidence throughout the proceeding suggested that the feasibility of supply options was related to whether they were "economic." The Board heard several proposals regarding the test to be used in determining whether supply options are, for the purposes of PDD, economic. This consideration is made explicit in the Tariff provision through the use of the term "economically."

The Board does not agree with the test proposed by Chevron which is based on a comparison of transportation costs between an alternative source and the Pipeline, and an assessment of the motives behind investment in the alternative. The Board is of the view that a test which narrowly focuses on transportation costs does not account for the full costs of supply or overall market dynamics, and thus is not representative of the information that refineries may use to make supply decisions. Furthermore, the Board is not agreeable to a test in which it would speculate on the motives behind a refinery's decision to invest in a supply option.

The Board will not conduct an individual economic assessment of each supply option for refiners, nor will it conduct an individual assessment on any other aspects of feasibility. In the Board's view, these assessments are the responsibility of the refiner in the design of its portfolio of supply options to support the long-term viability of its facilities. More specifically, it is the responsibility of the refiner to explore all supply options and develop the ones which offer the greatest potential to support its operational and financial requirements. The Board is of the view that refiners face both supply and price risks, and does not believe that PDD should be a substitute for proactively managing these risks. The Board notes that while some supply options may appear challenging to develop at any given point in time, it is not reasonable for a refiner to completely discard any options since supply and market

dynamics, technology and society's values and preferences all evolve through time.

The Board also does not agree with a test where the profitability of a refinery would be the sole determinative criteria. Refiners operate in a competitive business environment. In such an environment, fluctuations in profitability (whether across quarters, years or business cycles) have to be expected and, in some instances, losses can occur. In the Board's view, it would be inappropriate to use PDD to establish a floor of profitability or prevent losses for a refinery.

In the Board's view, the relevant consideration is instead whether the refinery, based on its entire supply portfolio, refining operations, markets and contribution to an integrated corporate entity, can reasonably ensure its long-term viability. Therefore, to the extent that an assessment of the economics of a refinery needs to be performed by the Board in its determination on PDD, the Board is of the view that this assessment should be limited to the following criterion: can the refinery reasonably ensure its long-term viability? In other words, the Board would consider whether the refinery can remain a going concern without a PDD.

The Board recognizes that requiring a party to demonstrate that its long-term viability is at risk is a high threshold to meet to be granted PDD. This, in the Board's view, is consistent with the Board's approach of relying on market forces where appropriate. This is also consistent with the attributes of PDD whereby PDD should only be a measure of last resort and only for a limited period of time. These attributes are further explained below.

PDD criteria

The Board remains of the view that PDDs should be kept to a minimum. The Board agrees with the Intervening Shippers, and finds that the primary role of PDD should be to provide short-term relief to shippers that face a significant supply disruption which, without PDD, would not only prevent the refinery from meeting its minimum run rate but would also compromise its long-term viability. To this extent, the purpose of PDD is not to artificially maintain the operations of a refinery over an extended period of time. The purpose, rather, is to provide a brief respite from a severe supply shortfall, thereby giving a refinery the opportunity to develop or modify its supply portfolio in the hope of avoiding the permanent termination of its operations. In this sense, PDD is an option of last resort. Given the time-sensitive nature of these circumstances, the Board notes that the regulatory process to consider future applications could be completed more expeditiously than the one used in this proceeding.

In light of the preceding discussion, the Board views the general criteria for qualifying for PDD as follows. PDD may be granted if a refinery:

i. is unable to meet, or is at substantial risk of not meeting, its minimum run rate; and
ii. cannot reasonably ensure its long-term viability.

If the refinery cannot reasonably ensure its long-term viability without factoring in a PDD, the Board would consider granting PDD to temporarily alleviate the impacts from a loss of supply, provided that an applicant can demonstrate that it is not capable of meeting its minimum run rate. In doing this, an applicant will be expected to demonstrate that it had exercised due diligence in exploring all possible options in developing its supply portfolio. The refinery must also be able to demonstrate that the costs of acquiring alternative supplies to meet its minimum run rate would be so great as to render the refinery permanently unviable. The Board is of the view that this requires the applicant to reasonably explain why it requires a PDD for the short term and how the brief period of PDD may help it develop or modify its supply portfolio to make the refinery viable.

The following sections assess Chevron's application for PDD for the Burnaby Refinery in accordance with the criteria described above.

3.2 Application of the PDD Criteria to the Burnaby Refinery

Submissions of Chevron

Volume Requirement

As part of its operations, the Burnaby Refinery runs two crude oil processing units, one with a nameplate capacity of 30,000 bpd and another with a nameplate capacity of 27,000 bpd. Thus, the nameplate (or locational) capacity of the Burnaby Refinery as a whole is 57,000 bpd.

According to Chevron, a practical minimum crude supply of 40,000 bpd is required to maintain operation of both units. If supply were to fall below this level, Chevron would be forced to shut down one of the two units. Chevron indicated that a refinery strives to obtain sufficient supply to reach its minimum run rate so as to be operational, and then looks to acquire additional supplies to reach its locational capacity.

Chevron indicated that the Burnaby Refinery has operated above its minimum run rate each month since apportionment reappeared in November 2010, excluding those when the refinery was subject to planned maintenance. Chevron stated that while it has successfully replaced a portion of its supply shortfall resulting from apportionment, it has been forced to incur extraordinary expense to obtain sufficient

crude to maintain its minimum run rate. Chevron submitted that it achieved its minimum run rate using nominations on the Pipeline, Westridge Dock bids, the Secondary Market, Intermediates, and its rail-to-truck-to-refinery supply option.

Alternative Sources

Chevron indicated that it had taken many steps over the years to mitigate the effects of apportionment on the Burnaby Refinery. In particular, Chevron had:

- Considered marine alternatives;
- Constructed the rail-to-truck-to-refinery option;
- Constructed the rail-to-refinery option;
- Imported Intermediates;
- Purchased crude petroleum or Pipeline capacity through the Secondary Market;
- Bid on crude petroleum volumes under the Bid Premium system in operation for the Westridge Dock;
- Bid for Firm Service in the 2006 open season for Pipeline expansion;
- Supported the construction of the Anchor Loop Project;
- Re-allocated an existing 105,000 barrel tank from isooctane to crude service;
- Opposed the Firm 50 Application (which reduced the capacity that was available to Land Destinations), although Chevron had bid unsuccessfully for capacity during this process; and
- Maximized its purchases of B.C. crudes that could be injected into Trans Mountain south of Kamloops.

Chevron submitted that the fact that the Burnaby Refinery is profitable running crude oil sourced from Western Canada and therefore can sustain losses on barrels acquired by other means of delivery should not disqualify the Burnaby Refinery from receiving PDD.

Chevron stated that the Burnaby Refinery is designed to receive light crude oil by the Pipeline and has limited capacity to receive crude oil of other types or by other means. It was Chevron's view that the lack of available land surrounding the refinery, and community opposition towards increasing tanker traffic, illustrate that it would not be possible to deliver 57,000 bpd to the refinery by any means other than the Pipeline. Chevron stated that it sees little opportunity to develop alternatives due to the logistics and geographic constraints of its refinery's location, as opposed to economic drivers. Chevron submitted that the most optimistic scenario for deliveries from alternate sources to the Burnaby Refinery is 14,000 bpd from its rail options. That, Chevron submitted, is short of the 57,000 bpd capacity of the Burnaby Refinery (and even far short of the 40,000 bpd minimum run rate of the refinery).

Chevron noted that there are a number of factors that make the Burnaby Refinery unique among the existing shippers:

- There is no evidence that any of the other shippers have experienced a shortfall of crude supply as a result of the recent apportionment on the Pipeline;
- There is no evidence that any of the Puget Sound Refiners have been at any risk of failing to meet their facilities' minimum run rates;
- There is evidence that the Puget Sound Refiners have access to waterborne crudes that the Burnaby Refinery does not have access to; and
- There is evidence that the Puget Sound Refiners have the ability to construct (or have constructed) unit train facilities in order to access in-land crude in volumes that the Burnaby Refinery cannot match because of its inability to receive unit trains.

Chevron's consideration of alternative sources is presented in the next paragraphs.

Waterborne

Chevron submitted the following limitations that, in its view, make imports over its Stanovan Wharf infeasible:

- Lack of available economic light, sweet crude off the west coast available for transport by barge;
- The Stanovan Wharf is incapable of accommodating long-haul cargoes of scale (e.g. tankers ranging in size from Panamax to Ultra Large Crude Carriers);
- Timing and coordination of receipts (the dock is designed for, and occupied with, product export vessels);
- Insufficient storage tankage;
- Lack of available barges of an appropriate size;
- Challenges in coordinating Pipeline deliveries with marine deliveries;
- Significant permitting requirements; and
- Sensitivity of the Burnaby community.

These risks and restrictions, in Chevron's view, limit the attractiveness of investment in infrastructure to access waterborne supplies. Chevron submitted that investment in new infrastructure cannot be justified in these circumstances because apportionment on the Pipeline may be reduced or eliminated prior to the investment being recouped and the cost of crude from offshore sources may render those imports uneconomic.

Rail

The rail-to-truck-to-refinery option consists of an operation to offload crude petroleum delivered by railcar to a "transload" facility, from where it is then transported by truck to the Burnaby Refinery. In order to implement this option, Chevron undertook construction of facilities at the Burnaby Refinery for unloading crude petroleum from trucks. Chevron began taking deliveries from this option in

May 2012 with 582 bpd, and deliveries had increased to 4,777 bpd in February 2013. The design capacity for this option is 6,000 bpd.

The rail-to-refinery option consists of an operation to offload crude petroleum delivered by railcar to the Burnaby Refinery. Chevron indicated that it expected this option to come online in mid-April 2013, but was concerned about the ability of this option to meet its maximum theoretical delivery objective of 8,000 bpd.

Chevron noted that it is only in the current market conditions, where mid-continent crude petroleum has been steeply discounted, that paying the high additional operating costs for its rail options is possible. Should these discounts narrow, it would render these alternatives uneconomic.

In Chevron's view, its rail-to-truck-to-refinery and rail-to-refinery alternatives are wasteful, and not economical, because the transportation costs of these options exceed the posted toll on the Pipeline. In addition, Chevron submitted that it constructed its rail capacity only for the purpose of mitigating supply shortfalls arising from apportionment, and meeting minimum run rates at the Burnaby Refinery.

Intermediates

In responding to apportionment on the Pipeline, Chevron has acquired partially refined petroleum in order to offset supply shortfalls of crude petroleum. The Burnaby Refinery imports Intermediates over its Stanovan Wharf, and the volume obtained as supplemental feedstock has been approximately 2,500 bpd.

Chevron stated that the purchase of Intermediates is of limited use for two principal reasons. First, Chevron's ability to receive supply of Intermediates is constrained by its storage and dock facilities. Second, Intermediates are already partially refined and further refinement to enhance their value requires only a portion of the facilities within the Burnaby Refinery.

Secondary Market and Westridge Dock Bids

Chevron's Burnaby Refinery has obtained additional deliveries on the Pipeline in excess of its own nominations by purchasing crude petroleum or delivery rights from other shippers on an unregulated, commercial basis. Chevron has also bid on crude petroleum volumes under the Bid Premium system in operation for the Westridge Dock.

According to Chevron, purchases from other shippers have been opportunistic and there have been no opportunities that were not taken up on the basis of price. Chevron considered it more likely that, over time, third parties will have use for the crude they nominate or the capacity they acquire, and therefore will not be a reliable or predictable source for excess crude or capacity in the future.

Chevron submitted that there is a large financial incentive for shippers to other Land Destinations to nominate for more capacity than they need knowing that if they obtain more than they ultimately need, they will have the option of reselling to Chevron at an unregulated rate. Chevron suggested that this situation could allow competitors the opportunity to deny sales of capacity or crude to the Burnaby Refinery knowing that the Burnaby Refinery may not be able to meet its minimum run rates.

Chevron also asserted that, given its lack of alternative sources, it has recently been placed in the position of needing to outbid all other shippers for the Westridge Dock capacity in order to secure enough crude to keep the Burnaby Refinery operating at minimum run rates.

Chevron stated that the essence of Priority Destination is that a shipper who has no alternatives to deliver the barrel that they need for their supply should not be forced into a Secondary Market that would be more costly, and require wasteful investments, just to maintain the operation of their facility.

In Chevron's view, there are two key reasons why the Secondary Market and volumes from Westridge Dock bids cannot be considered "alternative sources" as referred to in the PDD Tariff provision. First, Chevron asserted that the definition of PDD is focused on the characteristics of a location as opposed to a particular category of service. The characteristics of a location are unaffected by whether its deliveries are the result of Pipeline nominations, redirections from Westridge Dock bids or the result of purchases in the Secondary Market which are delivered by the Pipeline. Thus, from the perspective of the location, delivery by the Pipeline cannot be an alternative to delivery by the Pipeline.

Second, Chevron emphasized that the current capacity of the Pipeline is 300,000 bpd, which is larger than the capacity of the Burnaby Refinery and every other interconnected facility. Chevron argued that if the Pipeline were an alternative source for the purposes of PDD, every location on the Pipeline would be ineligible for PDD because the supplies available through purchases from other shippers could theoretically provide the balance of supply needed to fill any facility connected to the Pipeline.

Chevron acknowledged that Secondary Markets may play a role in allocating Pipeline capacity to those who value it most; however, Chevron argued that this is not currently happening on the Pipeline for Land Shippers. According to Chevron, the Secondary Market is currently ineffective in this regard because: 1) the allocation of capacity is based solely on monthly nominations and the system rewards those shippers able to boost their nominations the highest, not those that value the capacity most; and 2) the Secondary Market enables those who receive capacity through these nominations the ability to sell that capacity on an unregulated basis to those who are either not able to nominate as much or have no other source of supply.

Submissions of the Intervening Shippers

The Puget Sound Refiners and Imperial requested that Chevron's Application be dismissed as the Burnaby Refinery had failed to meet the PDD criteria.

Volume Requirement

Various parties have noted that since apportionment began in November 2010, the Burnaby Refinery has had sufficient supplies to meet or exceed its minimum run rate using crude volumes obtained from both its nominations as well as from alternate sources (excluding periods of planned maintenance). Imperial stated that there has been no demonstration by Chevron that it would be incapable of securing the feedstock supply necessary to continue operating the Burnaby Refinery. In Tesoro's submission, Chevron does not face any supply risk whatsoever, only a price risk. In particular, P66 and Shell noted that the Burnaby Refinery can easily meet its requirements on the Secondary Market provided that it is willing to pay market prices for the capacity or the crude in the Pipeline.

Alternative Sources

The Intervening Shippers agreed that the expression "alternative sources" in the Tariff provision should include the Burnaby Refinery's rail options as well as purchases on the Secondary Market and Westridge Dock bids. In addition, Dr. Carpenter noted that Intermediates should be viewed as an economic alternative, and Imperial argued that offshore alternatives should also be considered. BP Canada submitted that transmix and isooctanes should be recognized by the Board as "alternative" logistics and alternative sources of supply for the Burnaby Refinery.

Imperial submitted that a PDD applicant must demonstrate that it has pursued every possible alternative to nominating for volumes on the Pipeline. BP Canada was of the similar view that PDD should be considered only after any mitigation of supply shortfalls by the applicant. BP Canada added that any mitigation in the past or present, such as diversifying supply and logistics alternatives, or any future mitigation plans, should all be taken into account when looking at whether a destination is capable of being supplied with crude sources. BP Canada suggested that Chevron should be recognized for having undertaken efforts to facilitate the delivery of alternative sources of crude petroleum other than through nominations on the Pipeline. To do otherwise would incent shippers to take no steps to address any supply issues.

Mr. Hobbs, an expert witness for Tesoro, stated that the refineries in Puget Sound have made considerable investments in equipment at their refineries and dock loading facilities that enable them to receive and process a range of different crude oils that are readily available in world markets. Mr. Hobbs asserted that Chevron has not done so.

Tesoro argued that Chevron made a number of choices in the past to forego capital investments in the refinery, rail and dock facilities that would have increased Chevron's flexibility and ability to receive crude supplies. Likewise, BP Canada pointed out that Chevron made two very conscious choices: it chose only to source supply through the Pipeline; and it chose only to process Western Canadian crude oil at the Burnaby Refinery. BP Canada submitted that to the extent Chevron has or may in the future experience crude supply shortfall in respect of deliveries from the Pipeline, Chevron has itself generated this business risk and should be required to accept responsibility for the risk it undertook.

Refinery Viability

Parties submitted that the operation of the Burnaby Refinery has been and will continue to be profitable without a PDD, notwithstanding the apportionment on the Pipeline. Dr. Carpenter concluded that Chevron has shown that it has economic alternatives that can be run profitably at the Burnaby Refinery. Similarly, BP Canada stated that the Burnaby Refinery's alternative sources of supply can be processed profitably in aggregate, and in almost all cases each alternative source of supply has been, and is likely to be, incrementally economic. P66 and Shell argued that there was no evidence on the record that the viability of the Burnaby Refinery is in question.

Views of the Board

Application of the PDD criteria to the Burnaby Refinery

As discussed in section 3.1, the criteria to be used in determining whether PDD should be granted include two components. PDD may be granted if a refinery:

i. is unable to meet, or is at substantial risk of not meeting, its minimum run rate; and
ii. cannot reasonably ensure its long-term viability.

In the following section, the criteria will be applied to the Burnaby Refinery's current circumstances.

Is the Burnaby Refinery unable to meet its minimum run rate?

In its evidence, Chevron indicated that a minimum run rate of 40,000 bpd of feedstock is required to physically operate both processing units of the Burnaby Refinery. The Board observes that Chevron has consistently met its 40,000 bpd minimum run rate using the existing options in its supply portfolio, including the Secondary Market, Westridge Dock bids, the rail-to-truck-to-refinery option, and the import of Intermediates.

Furthermore, the Board is of the view that the ability of the Burnaby Refinery to meet its minimum run rate will be improved through the use of its rail-to-refinery supply option, which was expected to begin delivering crude oil to the Burnaby Refinery in April 2013.

For these reasons, the Board finds that the Burnaby Refinery, based on its portfolio of supply options, has been able to meet, and is not at substantial risk of failing to meet, its minimum run rates in the foreseeable future.

Can the Burnaby Refinery reasonably ensure its long-term viability?

The Board notes that several supply options have been used to mitigate the supply risk of the Burnaby Refinery. The Board encourages Chevron to continue to use and further develop this approach. The Board notes that other refiners who were part of this proceeding used a similar approach and Chevron should be no exception.

The Board is of the view that all of the supply options for the Burnaby Refinery discussed in this proceeding, whether existing or potential, are options that should be considered in determining whether the Burnaby Refinery can meet its minimum run rates and ensure its long-term viability. In the Board's view, it is the responsibility of Chevron to design a portfolio of supply options that will best mitigate its supply risk and ensure the long-term viability of the Burnaby Refinery. In this context, the Board believes that no option should be completely ruled out by Chevron in mitigating its supply risk for the future, including a potential waterborne option, the Secondary Market, Westridge Dock bids, and any other option that Chevron can develop to avoid PDD.

The Board is of the view that the Burnaby Refinery may, in some instances, be required to utilize supply options that are not profitable at the margin but are required to meet the minimum run rate. In the Board's view, this can be the reality of operating a refinery in a competitive marketplace. This is why the Board is of the view that Chevron cannot rely on PDD as a substitute to proactively managing its supply risk in a manner similar to that of any other prudent refinery operator.

As it relates specifically to the Secondary Market and Westridge Dock bids, the Board is of the view that Chevron's position that the Pipeline cannot be an alternative to the Pipeline is too restrictive of an approach for a refinery that needs to manage supply risk in a competitive business environment. The Board's interpretation of the Tariff is not restricted to its individual words and grammatical structure. Rather, a purposive approach should be applied in this case, giving consideration to the context of the market environment. While the Board recognizes that the Secondary Market may be less reliable than uncommitted service, the Board notes that the availability of supplies is

significantly related to the price a refinery is willing to pay for it. As a result, the Board is of the view that Chevron needs to proactively manage price risk as well as supply risk. The Board also notes that Chevron has successfully secured supplies through the Secondary Market and Westridge Dock bids on a consistent basis.

Given that Chevron was unable to meet the first criteria, there is no need for the Board to conduct an assessment of the Burnaby Refinery's long-term viability.

For the reasons outlined above, the Board finds that Chevron's Burnaby Refinery does not satisfy the criteria for PDD, and therefore should not be designated a Priority Destination.

3.3 Implications of PDD

Submissions of Chevron

Chevron was of the view that if a customer qualifies for PDD under the terms of the Tariff, then there is no unjust discrimination in that designation. The Board has determined that the Tariff, including the PDD provision, does not give rise to unjust discrimination in tolls, service or facilities. Chevron submitted that there is no onus on Chevron to prove this point as it was already proved by Trans Mountain to the Board's satisfaction in 1985 and was explicitly reaffirmed by the Board in RH-2-2011.

According to Chevron, its own interest and the public's interest in the ongoing operation of the Refinery are both impacted by uncertainty with respect to future supply. Chevron submitted that this uncertainty has left Chevron unable to make a future, long term commitment to take capacity on the proposed expanded Pipeline. In this regard, its inability to make a commitment now may compromise its ability to participate as a Firm Shipper later.

Chevron observed that PDD is a way to maximize effective refining capacity in the region, and that allocating PDD to Chevron in this proceeding would engage refinery capacity at the Burnaby location that may otherwise be idle. Chevron noted, however, that granting PDD will not idle any capacity at any other refinery.

Submissions of the Intervenors

Implications of Granting a PDD

The Puget Sound Refiners submitted that approving Chevron's PDD application would be at the expense of the other Pipeline shippers.

Tesoro argued that if PDD is granted as requested by Chevron, the Puget Sound Refiners would, in effect, subsidize their competitor. Tesoro asserted that this would be contrary to the public interest and the North American Free Trade Agreement (NAFTA). The Puget Sound Refiners would be required to source more of their feedstock needs with expensive waterborne crude oil, which is the marginal supply for all the Puget Sound Refiners, and that these shippers would likely apply for PDDs. Other intervenors made similar arguments.

P66 and Shell were of the view that granting PDD for the Burnaby Refinery would be an unwarranted interference in the market that would reward Chevron's failure to make prudent, efficient investments. Designating the Burnaby Refinery a Priority Destination would remove any incentive for it to pursue further innovations and investments in economically efficient means of supplying its Burnaby Refinery.

BP Canada submitted that any PDD on the Pipeline is discriminatory. According to BP Canada, granting Chevron priority over all other shippers (excluding Firm Shippers across the Pipeline's Westridge Dock) is by its very nature discriminatory, as preference to Pipeline capacity would be bestowed on Chevron. The Firm Shippers on the Westridge Dock took long-term risk and paid a premium to obtain a preference on the Pipeline. BP Canada stated that, if successful, Chevron would achieve a similar preference with no risk and no toll premium.

Implications of Denying a PDD

According to CEP, the present tariff creates an artificial market in which the large Puget Sound refineries are winning at the expense of the sole downstream and much smaller Burnaby Refinery. CEP argued that the competitive advantage enjoyed by the Puget Sound Refiners is not one they earned by innovation or efficiency, but one simply conferred upon them by tariff rules that advantage larger companies. When Chevron buys oil in the unregulated Secondary Market, it is often simply buying space on the Pipeline at a substantial premium from shippers who have been able to out-nominate it. CEP submitted that this was equivalent to paying a tax to its competitors for oil it requires to operate the Burnaby Refinery.

Tesoro submitted that denying the Burnaby Refinery PDD would require Chevron to continue to be active in the Secondary Market and to explore alternative infrastructure solutions.

Views of the Board

The Board has considered the impact of its determination in this proceeding and of PDD determinations generally. During the hearing, the Board heard submissions from parties about the potential implications on Chevron, Pipeline shippers, workers at the Burnaby Refinery, the local economy and refined product markets.

The Board acknowledges that granting a PDD to Chevron's Burnaby Refinery would provide it with greater access to a cheaper source of supply. While there would be benefits to the Burnaby Refinery from being granted a PDD, including protection from supply risk and increased profitability, the Board is of the view that this would not provide adequate incentive to Chevron to diversify its portfolio of supply options. As discussed above, the PDD provision is not intended to shield companies from their business risks or the need to make prudent investments.

The Board is of the view that because Pipeline capacity is scarce, granting PDD to Chevron's Burnaby Refinery would amount to a wealth transfer from the Intervening Shippers to Chevron. In the Board's view, granting PDD in this particular case to one shipper at the expense of many is not compatible with market-based solutions that the Board encourages parties to pursue where appropriate as it is the case in the current circumstances.

The Board does not typically concern itself with the economics of interconnected facilities unless tolls are not just and reasonable or the pipeline is unjustly discriminating. The Board's primary interest in the regulation of oil pipelines subject to common carrier obligations relates to whether the pipeline is appropriately allocating capacity among various destinations. This aspect will be addressed in Chapter 4 of this Decision.

The Board is of the view that its interpretation of the PDD criteria and the application of it in this proceeding strikes an appropriate balance ensuring that the PDD provision is applied in a reasonable manner that is not unjustly discriminatory.

Based on the disposition of Chevron's PDD Application, it is unnecessary to address implications relating to NAFTA.

Chapter 4

Allocation of Capacity, Nominations and Apportionment

In this proceeding, evidence was presented relating to the manner in which apportionment levels on the Pipeline are influenced by both nomination procedures and the behaviour of shippers competing for scarce capacity. Evidence was also presented on the relationship between market fundamentals and levels of Pipeline apportionment. This chapter will consider this evidence.

Overview of Allocation and Nomination Procedures

The Tariff allocates available Pipeline capacity as follows:

- First, among Firm Shippers;
- Second, among Priority Destinations as designated by the Board;
- Third, among nominations for uncommitted shipments to the Westridge Dock; and
- Fourth, among nominations for uncommitted shipments to Land Destinations.

Each Land Destination provides a monthly nomination to Trans Mountain indicating the volume of petroleum to be transported for the following month. In the event that nominations exceed Pipeline capacity, Rule 14.5(a) of the Tariff specifies that nominations for delivery to Land Destinations will first be apportioned by reducing the requested volumes pro-rata within all nominations to Land Destinations.
If, following this allocation, nominations for delivery to Export Destinations exceed the 180,000 bpd capacity of the Puget Sound Pipeline, such nominations will be further apportioned pro-rata to Export Destinations, and any excess volumes then allocated to Land Destinations pursuant to Rule 14.5(b) of the Tariff.

To prevent facilities from over nominating volumes on the Pipeline, Trans Mountain has also implemented a verification procedure under Rule 6.1 of the Tariff, whereby downstream facilities must provide written third party verification of the availability of supply to satisfy the nominated volumes, and of the capability to remove these volumes from the Pipeline.

Apportionment

Table 4-1 sets out the apportionment levels on the Pipeline from November 2010 to March 2013.

Table 4-1 Apportionment Levels on the Trans Mountain Pipeline System

Date	Apportionment	Date	Apportionment
November 2010	11%	February 2012	74.5%
December 2010	23%	March 2012	72.5%
January 2011	40%	April 2012	63%
February 2011	51%	May 2012	69%
March 2011	45%	June 2012	70%
April 2011	29%	July 2012	75%
May 2011	43%	August 2012	71%
June 2011	66%	September 2012	70%
July 2011	67%	October 2012	74%
August 2011	70%	November 2012	75%
September 2011	68%	December 2012	72%
October 2011	60%	January 2013	73%
November 2011	64%	February 2013	73%
December 2011	73%	March 2013	70%
January 2012	69%		

Submissions of Chevron

Chevron presented evidence from Wood Mackenzie, a consulting firm, which indicated that strong supply growth of crude oil in Western Canada and the U.S. Bakken should be expected through 2020, thereby keeping pressure on crude oil logistics. Wood Mackenzie also submitted that the price discount between Edmonton light sweet crude oil and Brent, referred to as the mid-continent discount, would remain near $25.00 per barrel.

According to Chevron, the Burnaby Refinery's demand on the Pipeline has not changed as a result of the discount because it remains dependent on the Pipeline for crude oil regardless of prevailing market conditions. Comparatively, Chevron submitted that the mid-continent discount attracted stronger demand from the Puget Sound Refiners. Chevron was of the view that if the mid-continent discount narrows toward zero, the economic drivers for the Puget Sound Refiners processing mid-continent crude oil would diminish.

Chevron asserted that attempts to redesign the nomination process or refine the allocation procedures on the Pipeline are not an alternative to granting Priority Destination and are a blind alley. According to Chevron, there have been a number of attempts over the last 10 years to consider through consultations and a series of Board hearings the allocation and nomination procedures that are employed on the Pipeline.

Submissions of the Intervenors

Mid-Continent Discount

In general, the intervenors indicated that a lack of crude oil takeaway capacity has resulted in the mid-continent discount. P66 and Shell suggested that other factors may include the growth in production in Western Canada as well as the declining Alaska

North Slope supply which has traditionally supplied some of the Puget Sound refineries.

Tesoro submitted that refineries are currently trying to maximize their runs of Canadian crude oil. Refineries on the West Coast not only enjoy a generally healthy “crack spread” (the difference between the market prices of refined products and feedstock prices), but also capture the difference when feedstock is purchased at a significant discount to world prices in Edmonton and shipped on the Pipeline.

Nominations

Some of the intervenors submitted that high levels of apportionment on the Pipeline are due to shippers over-nominating volumes. CEP argued that the evidence in the proceeding clearly indicated that the shippers are routinely nominating to ship volumes on the Pipeline far in excess of those they intend to actually refine.

BP Canada submitted that current apportionment levels are encouraging activities by shippers that may skew allocations of Pipeline capacity. According to BP Canada, the apportionment creates unreasonable and burdensome obligations on shippers to prepare to ship and receive volumes being nominated even though only a small portion of those nominations will be accepted.

Imperial submitted that Rule 14.5 of the Tariff facilitates over-nominations by the Puget Sound Refiners. It allows Trans Mountain to accept total nominations from these shippers in excess of the capacity of the Puget Sound Pipeline, which impacts the allocation of Pipeline capacity among all Land Destinations. According to Imperial, this distorts the apportionment determination to the detriment of the Canadian Land Destinations. It was Imperial’s view that Rule 14.5(b) is ineffective to prevent this distortion because the apportionment among nominations to Export Destinations is only done after the apportionment of nominations to all Land Destinations under Rule 14.5(a).

Proposed Solutions

BP Canada submitted that further investigation is required to address the issue of apportionment on the Pipeline. An appropriate remedy should relate to a more reasonable allocation of scarce and valuable pipeline capacity, rather than the establishment of a regulatory preference through PDD.

BP Canada asserted that if nominations more closely reflected the volume each shipper might reasonably expect to ship, then apportionment levels could be significantly reduced and the issues facing Land Shippers could to a material extent be mitigated. BP Canada suggested that if Trans Mountain’s procedures to verify nominations under the existing pro rata allocation methodology are unsuccessful, a potential alternative might include verifying these nominations on the basis of

shipping history. However, BP Canada also submitted that the real solution for apportionment is expansion of the Pipeline.

Imperial submitted that the current artificiality in the Pipeline apportionment levels needs to be rectified, and that eliminating over-nominations by Land Destinations would be to the benefit of the Burnaby Refinery. Imperial was of the view that the artificially high apportionment could be rectified by:

- properly and rigorously applying the verification procedure in Rule 6.1 of the Tariff, so that Chevron is not allowed to nominate for significantly higher volumes than it requires at the Burnaby Refinery; and

- apportioning nominations to Export Destinations as a first step under Rule 14.5 of the Tariff, so that the total nominations do not exceed the capacity of the Puget Sound Pipeline, and then as a second step, reducing these apportioned nominations pro-rata with the nominations to the other Land Destinations.

Views of the Board

The Board is of the view that based on the current and forecasted supply and market dynamics, apportionment on the Pipeline can be expected to persist. Parties to this proceeding agreed that one of the causes of apportionment on the Pipeline is the lack of takeaway crude oil pipeline capacity from the North American mid-continent, including the Western Canadian Sedimentary Basin. This leads to a price differential between mid-continent and waterborne crude oil, thereby making Western Canadian crude oil less expensive for refiners. The result is increased demand for capacity on the Pipeline.
The Board recognizes that forecasts are inherently uncertain; however, the Board notes that no party disputed the projections of Wood Mackenzie, who indicated supply growth out of Western Canada and the U.S. Bakken, as well as the persistence of the mid-continent discount for the entirety of the forecast period ending 2020. Most parties were of the view that apportionment of the Pipeline will remain even if the mid-continent discount narrows, partly due to the expectations for strong growth in the production of Western Canadian crude oil.

In addition to these factors, the Board finds that the current nomination and capacity allocation procedures are likely contributing to the ongoing apportionment of the Pipeline. The Board notes the arguments of the parties suggesting that revised nomination and capacity allocation procedures could address the Pipeline apportionment issue. Previous Board decisions have encouraged Trans Mountain and its shippers to continue discussions about this issue; however, there were no submissions in this proceeding indicating resolution.

In light of what the Board has heard, Trans Mountain is directed to revise its nomination or capacity allocation procedures to address the current apportionment on the Pipeline. In doing so, the physical limitations of the Puget Sound Pipeline should be given due consideration.

Trans Mountain is directed to submit its proposed procedures or an explanation of why the procedures in place at that time are adequate, for Board approval on or before 30 September 2013, after consultation with all shippers on the Pipeline.

Appendix I

MH-002-2012 Detailed Procedural History

On 19 June 2012, Chevron submitted the Application to the Board. On 3 August 2012, the Board issued Hearing Order MH-002-2012, which set out the procedures and dates to be followed in the hearing and a List of Issues. On 21 August 2012, in response to a request by Chevron, the Board amended the hearing order including the timetable of events. Several parties submitted comments on the List of Issues and, on 11 September 2012, the Board revised the List of Issues.

On 26 September 2012, Tesoro filed a motion requesting that the Board make a ruling, as a preliminary consideration, on issues related to NAFTA. The Board established a written process for comments on the NAFTA Motion.
On 18 October 2012, the Board dismissed Tesoro's NAFTA Motion in Ruling No. 1.

On 16 October 2012, Chevron filed responses to information requests, and a motion to treat certain responses confidential under section 16.1 of the NEB Act. The Board solicited comments on the motion. On 29 October 2012, after receiving responses from the parties and Chevron's reply comments, the Board issued Ruling No. 2, granting the requested relief, and established a process for handling the Confidential Information in Order PO-001-MH-002-2012. The Board subsequently received numerous requests for confidentiality under the terms of Order PO-001-MH-002-2012, and issued decisions on the requests in Ruling No. 4 (dated 23 November 2012), Ruling No. 5 (dated 5 December 2012), and Ruling No. 7 (dated 11 February 2013).

On 23 October 2012, Tesoro filed a motion seeking a Board order to compel Chevron to provide full and adequate responses to certain information requests. On 26 October 2012, the Board suspended the procedural schedule and established a written process to receive similar motions and comments on such motions.
BP Canada and P66 and Shell filed motions, and Tesoro filed a revision to its motion. After receiving comments from Chevron on these motions, and the intervenors' reply, the Board issued Ruling No. 3 on 15 November 2012.

In Ruling No. 3, the Board compelled Chevron to respond to some of the information requests. The Board also established a written process for hearing additional motions for full and adequate responses related to the new information Chevron was required to file and certain Confidential Information. On 5 December 2012, the Board ruled on all outstanding motions related to inadequate responses to information requests in Ruling No. 5 and established a revised timetable for the proceeding's remaining events.

On 24 January 2013, several intervenors filed responses to information requests, along with motions to treat certain responses confidential under section 16.1 of the NEB Act. On 30 January 2013, the Board issued Ruling No. 6, granting the requested relief, and established a process for handling the Confidential Information in Order PO-002-MH-002-2012.

On 29 January 2013, the Board invited parties to a teleconference to discuss procedural matters primarily related to the handling of Confidential Information during the oral hearing. The teleconference was held on 5 March 2013 and the Board issued a procedural update on 12 March 2013.

The oral portion of the hearing took place from 26 March to 4 April 2013 in Calgary, Alberta. Portions of the oral hearing were open to the public, while Confidential Information was tested during *in camera* sessions.

Based on the extent of Confidential Information canvassed in the proceeding, the Board decided to accept written final argument only so that redacted versions could be publically available. On 10 April 2013, Chevron and CEP filed final argument. On 16 April 2013, the B.C. Ministry of Energy, Mines and Natural Gas, BP Canada, Imperial, P66/Shell, Tesoro and Trans Mountain filed final argument.
On 19 April 2013, Chevron filed reply argument.

Appendix II

MH-002-2012 List of Issues

The Board has identified the following issues relevant for discussion in the proceeding[2]:

1. The criteria to be used to designate Priority Destination in accordance with section 1.58 of Tariff No. 88.

2. The implications resulting from the disposition of any Priority Destination application, and consideration of the need for, implications of, and alternatives to granting Priority Destination.

3. Whether the Application meets the criteria for designating Chevron's Burnaby Refinery as a Priority Destination.

4. Whether any aspects of the Application are contingent on issues to be decided, or already decided, in other regulatory proceedings; specifically, in reference to matters regarding a proposed expansion of the Trans Mountain pipeline system, including:

    a. Trans Mountain Pipeline ULC regarding toll methodology (File OF-Tolls-Group1-T260-2012-06 01); and
    b. Suncor Energy Products Partnership regarding the open season process (File OF-Tolls-Group1–T260–2012-04 01).

    If so, the extent to which the issues are inter-related.

5. The terms and conditions, if any, that should be included in any approval the Board may issue.

[2] As revised on 11 September 2012.